

¶1 Appellant Michael Sparlin appeals from the trial court’s entry of judgment against him and in favor of Federal National Mortgage Association (FNMA) in a forcible detainer action. Sparlin argues that because he was not served properly, the court lacked jurisdiction and that it committed other trial errors. But, because we do not have jurisdiction, we dismiss this appeal.

Factual and Procedural Background

¶2 “We view the facts in the light most favorable to sustaining the trial court’s judgment.” *Sw. Soil Remediation, Inc. v. City of Tucson*, 201 Ariz. 438, ¶ 2, 36 P.3d 1208, 1210 (App. 2001). FNMA sued Sparlin, unnamed defendants, and unnamed occupants in a forcible detainer action, additionally asserting it was entitled to possession of a property as a result of a trustee’s sale and requesting attorney fees. Following a bench trial, the court entered a judgment finding Sparlin and any occupants of the property guilty of forcible detainer and ordering them to surrender possession of the property. Sparlin filed a notice of appeal and both parties filed briefs on the merits. This court ordered the parties to file supplemental briefs addressing, in part, whether this court has jurisdiction to consider the appeal. Only FNMA filed a supplemental brief.

Discussion

¶3 FNMA argues this court has jurisdiction over the appeal, despite the trial court never having addressed its request for attorney fees. FNMA contends that the judgment “disposed of all of the issues” because the request for fees “was predicated on a statute” and that it was not required to assert a separate claim for attorney fees in the complaint pursuant to Rule 54(g), Ariz. R. Civ. P.

¶4 We have an independent duty to determine whether we have jurisdiction. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997). Our jurisdiction is prescribed by statute, and we have no authority to entertain an appeal over which we do not have jurisdiction. *See Hall Family Props., Ltd. v. Gosnell Dev. Corp.*, 185 Ariz. 382, 386, 916 P.2d 1098, 1102 (App. 1995).

¶5 In a forcible detainer action, an appeal to this court may be taken “as in other civil actions.” A.R.S. § 12-1182; *see Morgan v. Cont’l Mortg. Investors*, 16 Ariz. App. 86, 91, 491 P.2d 475, 480 (1971) (interpreting § 12-1182 to apply to court of appeals when original action commenced in superior court). Section 12-2101(A)(1), A.R.S., vests jurisdiction in this court for an appeal “[f]rom a final judgment,” which is one that “‘dispose[s] of all claims and all parties,’” *Maria v. Najera*, 222 Ariz. 306, ¶ 5, 214 P.3d 394, 395 (App. 2009), *quoting Musa v. Adrian*, 130 Ariz. 311, 312, 636 P.2d 89, 90 (1981). Although a court may enter a final judgment on fewer than all the claims or parties, it may only do so “upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” Ariz. R. Civ. P. 54(b).

¶6 Rule 54(b) specifies that “[f]or purposes of [that] subsection, a claim for attorneys’ fees may be considered a separate claim from the related judgment regarding the merits of a cause.” This means that attorney fees are a separate claim which must be decided before a case is final. *Nat’l Broker Assocs., Inc. v. Marlyn Nutraceuticals, Inc.*, 211 Ariz. 210, ¶ 36, 119 P.3d 477, 484 (App. 2005). And Rule 58(g), Ariz. R. Civ. P., provides that generally “a judgment shall not be entered until claims for attorneys’ fees

have been resolved and are addressed in the judgment.” The comments to Rule 58(g) set forth that if an appeal on the merits would be appropriate without resolving attorney fees, the trial court may enter a judgment pursuant to Rule 54(b). By contrast, Rule 54(g) concerns only “the timing and method of claiming fees.” *Nat’l Broker Assocs.*, 211 Ariz. 210, ¶ 34, 119 P.3d at 484.

¶7 In the absence of a judgment pursuant to Rule 54(b), there exists only a limited exception to the final judgment rule that allows a notice of appeal to be filed after the trial court has made its final decision, but before it has entered a formal judgment, if no decision of the court could change and the only remaining task is merely ministerial.

Smith v. Ariz. Citizens Clean Elections Comm’n., 212 Ariz. 407, ¶ 37, 132 P.3d 1187, 1195 (2006). Apart from these limited circumstances, a premature notice of appeal filed “in the absence of a final judgment . . . is ‘ineffective’ and a nullity.” *Craig v. Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d 624, 626 (2011), *quoting Smith*, 212 Ariz. 407, ¶ 39, 132 P.3d at 1195.

¶8 In its complaint, FNMA requested attorney fees and costs “in an amount not less than \$500.00.” However, neither the final judgment nor the minute entry from the trial court refers to the attorney fee issue. Rules 54(b) and 58(g) set forth that a request for attorney fees is a separate claim for purposes of a judgment’s finality and that in the absence of a judgment pursuant to Rule 54(b), a judgment must dispose of any attorney fees claim in order to be final. *See Nat’l Broker Assocs.*, 211 Ariz. 210, ¶ 36, 119 P.3d at 484-85.

¶9 FNMA relies on Rule 54(g), which provides an exception from the general rules for making a claim for attorney fees for “claims for fees and expenses as sanctions pursuant to statute or rule.” *See Britt v. Steffen*, 220 Ariz. 265, ¶ 24, 205 P.3d 357, 363 (App. 2008) (entry of final judgment does not end trial court’s jurisdiction over sanctions pursuant to Rule 11(a), Ariz. R. Civ. P.). But A.R.S. § 12-1178(A), under which FNMA asserts it requested attorney fees, does not allow fees as a sanction; it simply provides that attorney fees may be awarded to a successful plaintiff in a forcible entry and detainer action. Therefore, the exception does not apply here.

¶10 Because the trial court did not dispose of the claim for attorney fees and did not make a determination pursuant to Rule 54(b), its judgment was not final. Thus, Sparlin’s notice of appeal was a nullity, *see Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d at 626, and we lack jurisdiction over the appeal, *see Maria*, 222 Ariz. 306, ¶ 5, 214 P.3d at 395.

Conclusion

¶11 For the foregoing reasons, we dismiss the appeal.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge